

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/GB2005/000447

International filing date (day/month/year)
09.02.2005

Priority date (day/month/year)
12.02.2004

International Patent Classification (IPC) or both national classification and IPC
E02D29/02, E04C1/39

Applicant
HESCO BASTION LIMITED

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and Industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1b(s) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

- 3. For further details, see notes to Form PCT/ISA/220.**

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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2005/000447

Box No. V Reasoned statement under Rule 43b/s.1(a)(i) with regard to novelty, Inventive step or Industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	17
	No: Claims	1-16,18-38
Inventive step (IS)	Yes: Claims	
	No: Claims	17
Industrial applicability (IA)	Yes: Claims	1-38
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

V.1 Reference is made to the following documents:

D1: US-A-5 368 410 (FERRAILOLO ET AL) 29 November 1994

D2: US-A-2 121 173 (MACPHERSON WILLIAM MATHEW) 21 June 1938

V.2 The present application does not meet the criteria of Article 33(1) PCT, because

- the subject-matter of claims 1-16, 18-38 is not new (Article 33(2) PCT) and
- the subject-matter of claim 17 does not involve an inventive step (Article 33(3) PCT).

the reasons being as follows:

V.21 The document **D1** is regarded as being the closest prior art.

V.22 **D1** discloses (the references in *italic* applying to this document):

- a) a cage structure *1* comprising opposed side walls *5*, *7* connected by opposed end walls *3*, *4* defining a cage cavity *13* therebetween (*fig. 1; col. 3, lin. 56 - col. 4, lin. 11*),
- b) the cage structure *1* being provided on at least one side [or end] wall *7* with a façade *2* spaced from said side [or end] wall *7* to an extent sufficient to accommodate a surface effect material *9* between the at least one side [or end] wall *7* and the façade *2* (*fig. 1, 5, 10; col. 4, lin. 1-18; col. 2, lin. 37-64*).

Hence, the subject-matter of the Independent claim 1 is not new.

V.23 The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding Independent claim 3, which therefore are also considered not new.

V.24 **D1** discloses (the references in *italic* applying to this document):

- a) an apparatus *2* for creating an outer surface effect of a structure *1* wherein at least one wall *3*, *4*, *5*, *7* of the structure *1* defines a support surface (*fig. 1; col. 3, lin. 56 - col. 4, lin. 11*),
- b) the apparatus *2* comprising means defining a covering surface *2* which overlies the support surface *7* but is spaced therefrom, so that a quantity of material *9* to create the outer surface effect can be positioned between the support surface *7* and the covering surface *2* (*fig. 1, 5, 10; col. 4, lin. 1-18*),
- c) and wherein the covering surface *2* is in the form of a panel (*fig. 1; col. 3, lin. 61-67*).

Hence, the subject-matter of the **independent claim 9** is **not new**.

- V.25 The additional features of the **dependent claims 2, 4-8, 10-16, 18-38** are also disclosed in **D1** (*fig. 1, 5, 10; col. 2, lin. 37-64; col. 5, lin. 14-18, 31-44, 50-61*).

Hence, the subject-matter of these claims is also **not new**.

- V.26 In the **dependent claim 17** a slight constructional change in the apparatus of claim 15, see V.25 above, is defined which comes within the scope of the customary practice followed by persons skilled in the art, especially as the advantages thus achieved can readily be foreseen. Reference can be made e. g. to the document **D2** (*fig. 7; page 3, col. 2, lin. 17-24*). Hence, the subject-matter of this claim **lacks an inventive step**.

- V.3 The subject-matter of claims 1-38 is industrially applicable (Article 33(4) PCT).

- V.4 Other remarks

- V.41 Each of the **claims 13-24, 29** do not only define the claimed entity ("apparatus") *per se*, but also specify its relationship to other entities ("structure"; "material") which is not part of the claimed entity, cf. claim 9 ("... for creating an outer surface effect of a structure ..."; "... so that a quantity of material ... can be positioned ..."). Since the invention according to each of the **claims 13-24, 29** is defined by reference to features relating to the entity's use, a lack of clarity results (Article 6 PCT; PCT-Guidelines, 5.37). The applicant is requested to remove this inconsistency, e. g. by directing the claim to a combination of the above entities (e. g. "Assembly comprising apparatus, structure and material ...").

- V.42 The independent **claims 1, 3, 9** are not in the two-part form (Rule 6.3(b) PCT), which in the present case would be appropriate, with those features known in combination from **D1** being placed in the preamble (Rule 6.3(b)(I) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).

- V.43 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

- V.44 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document D1 is not mentioned in the description, nor is this document identified therein.